PP

v.

ZARUNA YUSOFF

HIGH COURT MALAYA, KOTA BHARU
SURIYADI HALIM OMAR J
[CRIMINAL TRIAL NO: 45-4-2001]
12 MAY 2003

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking in 29.18g of heroin - Chemist report - Chemist analysing only 4.1% of seized drugs - Whether adequate samples taken for tests - Section 37(j) presumption - 10% requirement thereof - Whether pertained to samples' weight per se - Dangerous Drugs Act 1952, ss. 37(da), 37(j), 39B(1)(a)*

The accused was charged with an offence under s. 39B(1)(a) Dangerous Drugs Act 1952 ('DDA') when wrappings of heroin were found concealed in her underwear. Before the learned judge, an issue arose as to whether s. 37(j) DDA, *ie*, the presumption of trafficking thereof, applied, and consequently whether a *prima facie* case had been made out against the accused, when the chemist, whilst taking in four samples from each of the 30 bottles of the seized substance for his tests, had in actuality tested only 4.1% of the seized drugs or 1.5823g out of 38.53g gross net weight of the same. The prosecution argued that there was nothing to hinder the court from invoking the s. 37(j) presumption, as the 120 samples more than represented the 10% required by the law. It was further contended that the 10% requirement pertained to the receptacles and not the samples' weight *per se.*

Held:

[1] The contention that the 10% must relate to the receptacles and not the samples' weight *per se* was without merit. The words "... it shall be sufficient to analyse samples of the contents of a number not less than ten per centum of such receptacles ..." in s. 37(j), whether by their construction or even by literal translation, refer to the contents from each receptacle. Any other construction would result in a bizarre outcome, and would be out of the context of the sentence passed by Parliament. (p 671 h - 672 a)

[2] No explanation was offered as to how the 120 samples could be said to represent more than 10% of that required by law. Merely saying that the samples represented 10%, without anything more, was unacceptable evidentially. In the circumstances of the case, the test of adequate quantity ought to be adverted to, namely, that the source of the 10% ought to be derived from the weight of the samples taken *vis-a-vis* the gross weight of the seized substance. It followed that, in the dearth of the samples' weight, which could establish that a minimum 10% from the gross seized substance had been sampled, the court must reject the prosecution's approach. (p 672 b-e)

[3] Even though the chemist had blended the white powdered substance from each package, he had merely taken 1.5823g from the gross net weight of 38.53g. This was only 4.1 % of the whole amount. In the final analysis, with only 1.19g having been confirmed as heroin, s. 37(j) was beyond the reach of the prosecution, inevitably leaving a gap in its case. (p 674 g)

[4] From the surrounding facts, and the conduct of the accused, it could be inferred that she was the one who had concealed the wrappings in her underwear. And from the way they were wrapped, carried and hidden, it could further be inferred that the accused knew the nature of the substance in her custody and control. The accused, hence, must have known the nature of the drugs. (p 675 f-g)

[4a] However, apart from it being trite that any invocation of a second presumption is now taboo, the invocation of s. 37(da) was an improbability, as the minimum statutory amount of 15g of heroin was way out of the prosecution's reach. But even if s. 37(da) were applicable, where mere possession shall be presumed to be trafficking, case laws had clearly enunciated that mere passive possession without any overt act would not qualify as trafficking *(PP v. Chia Leong Foo & Chow Kok Keong v PP).* (p 676 a-f)

[5] The prosecution having failed to prove the total sum of 29.18g of heroin, no *prima facie* case of trafficking had been made out against the accused. The prosecution, however, had proved possession of 1.19g of heroin, and that being so the charge was amended to one under s. 12(2) of the DDA. (p 678 e-f)

[Accused sentenced to five years' imprisonment after pleading guilty to amended charge.]

Case(s) referred to:
Chan Pan Leon v. PP [1956] MLJ 237 ***(refd)***
Chow Kok Keong v. PP [1998] 2 CLJ 469 FC ***(refd)***
Leong Bon Huat v. PP [1993] 3 CLJ 603 SC ***(foll)***
Looi Kow Chai & Anor v. PP [2003] 1 CLJ 734 CA ***(refd)***
Mohammad Ambunani [1994] 4 CLJ 871 HC ***(foll)***
Muhammed Hassan v. PP [1998] 2 CLJ 170 FC ***(refd)***
Ng Yiu Kwok v. PP [1989] 3 MLJ 166 SC ***(refd)***
PP v. Chia Leong Foo [2000] 4 CLJ 649 HC ***(refd)***
PP v. Ahmad Lateh [1991] 1 CLJ 71; [1991] 2 CLJ 36 HC ***(refd)***
PP v. Badrulsham Baharom [1988] 2 MLJ 585 ***(refd)***
PP v. Bahari Isa [1999] 1 LNS 323 HC ***(refd)***
PP v. Ramli Long & Anor [1993] 1 CLJ 144 HC ***(refd)***
PP v. Rosman Ismail [2003] 5 CLJ 139 HC ***(refd)***
PP v. Sikal Sahibudin [2001] 1 LNS 346 HC ***(foll)***
PP v. Tan Ann Chye [2003] 5 MLJ 1 HC ***(refd)***
PP v. Vadivelu Gopal [1999] 8 CLJ 463 ***(not foll)***
Saad Ibrahim v. PP [1968] 1 MLJ 158 ***(refd)***
Teoh Hoe Chye v. PP [1987] 1 CLJ 471; [1987] CLJ (Rep) 386 ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 180(1)
Dangerous Drugs Act 1952, ss. 2, 12(2), 37(d), (j), 39B(1)(a), (2)

For the prosecution - Jamal Mohamed DPP
For the accused - En Redzuan; M/s Redzuan Mazihan & Co

Reported by WA Sharif

JUDGMENT

Suriyadi Halim Omar J:
The accused person was charged as follows:

> Bahawa kamu pada 2 September 2000 pada lebih kurang jam 4.00 petang di Pejabat Kastam Cawangan Pencegah Rantau Panjang, di dalam daerah Pasir Mas di dalam Negeri Kelantan Darul Naim, telah didapati mengedar dadah berbahaya iaita 29.18 gram heroin dan oleh yang demikian kamu telah melakukan satu kesalahan di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 (Akta 234) dan kamu boleh dihukum di bawah s. 39B(2) Akta yang sama.

(Interpreted version:

> That you on September 2, 2000 at about 4.00 p.m. at the Custom's Office, of the Preventive Division of Rantau Panjang, in the district of Pasir Mas in the State of Kelantan Darul Nairn, was found to be trafficking dangerous drugs ie, 29.18 grams of heroin, and have thus committed an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 (Act 234) and you may be sentenced under s. 39B(2) of the same Act.)

On 2 September 2000, one Encik Yusmi bin Yusof a Superintendant of Customs, had informed PW2 who was on duty at the preventive section of the Royal Department of Custom of certain information, whereupon other officers in the like of Wan Mohd Nasir bin Wan Ibrahim were gathered and a short briefing ensued. In furtherance to that information, PW2 at about 2pm had made some discreet observation at the outskirt of a small village called Kampong Bagus, in the vicinity of Pengkalan Pasir. At about 2.20pm four persons, comprising the navigator, two female persons and a child, were seen boarding a small boat. PW2 followed the two women and child until they made a stop at a resting place, whereupon he together with the other team members approached them. After introducing himself these three persons were detained. They were then transported to the Preventive Office of Rantau Panjang, whereat PW3 was informed of the arrest. The latter, wishing to conduct a thorough search of them had immediately gone straight to that center. He arrived there at about 3pm. A search, assisted by two female custom officers, *viz.* PW4 and PW5, was carried out at about 4pm. That search, which was conducted at the file room, eventually led to the discovery of three packages wrapped in a Chinese newspaper concealed in the underwear worn by the accused. Despite that discovery the packages were not removed from her immediately. PW4 then informed PW3 of the findings.

On receipt of that news PW3 had entered that room, and after the introductions were over, the accused had physically and ceremoniously handed over the packages to PW3. Why this ludicrous exercise had to be performed, whilst she was in a semi-nude predicament not only exceeded the boundries of chastity but also revealed archaic investigation mentality. If the Custom's Department had wanted to prove custody and control by that methodology of handing over, in the circumstances of the case, I was not impressed.

The packages were unwrapped in the presence of the accused, and in each of the wrappings were found transparent plastic bottles, which contained white powdered substance. During the hearing, the bottles and their contents were tendered as P9 (a1)-(a10) for the first wrapping, P14 (a1)-(a10) for the second wrapping, and P21 (a1)-(a10) for the third. On instruction PW7 had photographed the relevant items.

PW3 had accordingly marked the relevant items, and had personally attended to them pending the arrival of the investigating officer (PW6). At about 11pm, with the latter's arrival the seized items were handed over to him. After going through them, he had those wrappings and the contents under lock and key in a safe. The next day, that was 3 September 2000 the seized items were retrieved from the abovementioned safe, unwrapped, sealed and then stored back in that same safe. On 4 September 2000, the seized items were sent to the Chemist Department. As the latter Department had analysed the white substance as heroin, the accused was subsequently charged in court under the current charge of trafficking.

A substantial part of the hearing revolved around the issue of the correctness of the analysis carried out by the chemist (PW1), as a consequence of my poser and query of the percentage of the samples undertaken for purposes of the analysis. This poser was made as s. 37(j) of the Dangerous Drugs Act 1952 (hereinafter referred to as the Act), which was adverted to by the prosecution reads:

> 37. Presumptions.
>
> In all proceedings under this Act or any regulations made thereunder:
>
> (j) when any substance suspected of being a dangerous drugs has been seized and such substance is contained in a number of receptacles, it shall be sufficient to analyse samples of the contents of a number not less than ten per centum of such receptacles and if such analysis establishes that such samples are all of the same nature and description, it shall be presumed, until the contrary is proved, that the contents of all the receptacles were of the same nature and description as the samples so analysed and if such analysis establishes that such samples consist of or contain a dangerous drug, it shall be presumed, until the contrary is proved, that the contents of all the receptacles consist of or contain the same proportion of such drug.

The question that was central for my consideration was what was meant by that 10% in the above provision? The prosecution had ventilated that the 10% must relate to the receptacle, and not as regards the sample's weight *per se*. This view seemed to be in consonant with the view in *PP v. Vadivelu Gopal* [1999] 8 CLJ 463 whereat the court had opined:

> It is clear that s. 37(j) may be availed of only where the substance is contained in a number of receptacles. The section could have been applied in this case, requiring the chemist thereby to analyse the contents only of one packet, being therefore 25% of the receptacles, and the result identifying the dangerous drug, and the percentage derived from the quantitative tests of that one packet is applied to all four packets.

Teoh Hoe Chye v. PP [1987] 1 CLJ 471; [1987] CLJ (Rep) 386 which was referred to by the prosecution likewise had held the same view, in that the 10% concerned the package and not the contents of every package.

To resolve the controversy a necessity arose for me to peruse the answers of the chemist first. According to PW1, he had taken four samples from each of the thirty bottles, and had carried out a qualitative test comprising the marquis, frodhes, thin layer chromatography and precipitation tests. The total tests carried out were 120, and from the analysis he was satisfied that the seized substance contained heroin.

Having completed those tests, PW1 thereupon had mixed all the white substance in accordance with their respective package, and had blended them so as to carry out a quantitative test. The purpose was to arrive at the percentage of the heroin content in the white substance and their actual weight. To arrive at that conclusion the gas chromatography test was alluded to. For this test PW1 had made 22 weighings from each wrapping and had randomly taken samples from them.

In brief, the prosecution had ventilated that if ten bottles were seized suspected of containing heroin, suffice if an analysis were performed only on one bottle, representing 10% of all the seized receptacles. The result of one bottle then would be applicable to all the other nine bottles. If the stance of the prosecution were to be accepted, the follow-up question would be, what about the untested seized substance? I was unwilling to acquiesce to the prosecution's view as the relevant presumption provision reads "... it shall be sufficient to analyse samples of the contents of a number not less than ten per centum of such receptacles ...". The words promulgated whether

by their construction, or even by literal translation refers to the contents from each receptacle, and not just on the receptacle itself (see my view in *Public Prosecutor v. Tan Ann Chye (infra)*). Any other construction would result in a bizarre outcome, and certainly out of context of the sentence passed by Parliament.

The prosecution had further submitted that as 120 samples had been taken, it was thus more than ample for the court to invoke s. 37(j) of the same Act, as it represented more than 10% of the legal requirement. Regretfully the prosecution had failed to explain how the 120 samples could be said to represent more than 10% of that required by law. Merely by saying that the samples represented 10%, but without supplying sufficient and cogent reason was unacceptable evidentially, as at best it was hot air for its lack of specificiation. Surely in the circumstances of the case, the test of adequate quantity or adequate amount could be adverted to to resolve the matter, in that the source of the 10% could be derived from the weight of the sample taken *vis-a-vis* the gross weight of the seized white powdered substance (see *Leong Bon Huat v. PP* [1993] 3 CLJ 603; *PP v. Mohammad bin Ambunani* [1994] 4 CLJ 471 and *PP v. Sikal bin Sahibudin* [2001] 1 LNS 346). If 100% of the seized white substance had been analysed this weighing and comparing exercise would be irrelevant. In the light of the dearth of the samples' weight, which could establish that a minimum of 10% from the gross seized substance had been sampled, what else could I do except to reject the prosecution's approach.

Despite the obvious lack of data, the prosecution still had persisted to persuade the court that as the findings of the chemist department were founded on acceptable, precise and non-confusing methods, those results should be accepted without question. In support, the cases of *Ng Yiu Kwok v. Public Prosecutor* [1989] 3 MLJ 166 and *Public Prosecutor v. Ahmad bin Lateh* [1991] 1 CLJ 71; [1991] 2 CLJ (Rep) 36, were refered to. As regards the method, I did have the opportunity of discussing it in some depth in relation to s. 37(j) in *Public Prosecutor v. Tan Ann Chye* [2003] 5 MLJ 1. Due to its relevancy and applicability in this current case, it would not hurt if I were to allude to some of the salient remarks made there, where amongst others, I commented:

Due to its imprecision it may produce, *inter alia*, these constructions, namely that:

i) the analysis is to be carried out on 10% of the gross contents of all the receptacles; and

ii) an unspecified percentage or amount of sample will be used for analysis only on 10% of the combined receptacles seized (a rather popular view with the Chemist Department).

I further added:

If my first construction were to be applicable, the chemist will start off with the weighing of the contents of all the receptacles, followed by a homogenizing exercise of the gross content pursuant to certain accepted standard, thereafter putting aside 10% out of the total weight, and finally analyzing that separated 10%. As for the second construction there may be contending sub-interpretations *viz.* the chemist may just weigh the gross content of all the receptacles, put aside 10% and thereafter homogenize only that 10% followed by the analysis. As testified by the chemist, the amount of sample to be analysed by him would be irrelevant. The other sub-interpretation is for the chemist to weigh the contents of all the receptacle, followed by the homogenizing exercise off all the contents before separating 10%, and finally analyzing a portion of the 10% without regard to the amount of sample, similar to the approach of the first sub-construction.

In conclusion I had authored:

To complete the picture, on the issue of whether the chemist ought to homogenize only the 10% that has been set aside for analysis (after weighing the contents of all the receptacles), or whether the chemist must homogenize first the contents of all the receptacles before separating the required 10%, a more accurate result could be attained if the latter steps were adhered to.

What I had intended to emphasise there, and inevitably here, apart from it being sensible, was the mode or method laid down by Parliament en route to the sampling exercise, which would certainly avoid any chinks in the analysis by the chemist. I had opined that before separating the required 10% the contents of all the receptacles must be homogenized first. It cannot be overly emphasised that both the gross contents of the receptacles, in this case the seized white substance and the separated 10% sample, must be weighed first prior to the analysis by the relevant chemist. That 10% isolated

for analysis, would surely represent the whole substance, and produce consistent results regardless of the number of times samples were to be taken for analysis. They would certainly qualify as being representative.

Why should 10% of the contents of the receptacle be the yardstick one might ask? Apart from the requirements of the law, the plain words of Ian Chin J in *Public Prosecutor v. Rosman Ismail* [2003] 5 CLJ 139, at p. 141 says it all, when His Lordship had said:

> In my view an amount of at least 10% is required to reduce the risk of the larger unexamined mass of the substance containing a greater amount of impurities and this reduce the amount or quantity of methamphetamine in the substance and giving rise to the possibility that the amount may be less than the 50gms that attracts the death penalty.

It must be reminded that, whether it be 1 gram or 0.01 gram, would certainly mean a great deal to a person charged under s. 39B(1)(a) of the Dangerous Drugs Act 1952, as it is a question of life and death for him. The accuracy of the analysis of the chemist, which will establish the type of drugs and the weight, is paramount to the accused and hence must not be taken lightly.

To wind it up, any chemist should set aside 10% of the gross seized suspected substance for analysis, as legislated by Parliament in s. 37(j) of the Act, and not to blindly be subservient to the method suggested by the Chemist Department sourced from some United Nations manual. Any method, which runs counter to the spirit and purpose of the law, deserves scant attention, even departmental circulars or the mysterious external manual.

From the evidence adduced here, even though PWI had blended the white powdered substance from each package, he had merely taken 1.5823 grams from the gross net weight of 38.53 grams. This was only 4.1 % of the whole amount for analysis as admitted by PW1, an amount that was a far cry of the statutory 10%. In the final analysis, with only 1.19 gram as being confirmed as heroin, s. 37(j) therefore was beyond the reach of the prosecution, inevitably leaving a gap in the latter's case.

I now touch on the issue of the accused's knowledge, an ingredient which is highly pertinent to a charge of trafficking or even mere possession (in fact for all proceedings under the Act or any regulations made thereunder). To prove that factor is no easy matter, hence perhaps the promulgation of s. 37(d) of the Act, much to the chagrin of any accused person facing any charge under the Act. It must be stated that at no time did the prosecution, to establish that the accused knew of the contents of the wrappings, adduce any direct evidence.

Being aware of the wrappings and their contents are two totally distinct matters.

The above issue of mens rea must take center stage in my discussion now as s. 37(d) of the Act had been adverted to by the prosecution. It reads:

> s. 37(d): any person who is found to have had in custody or under his control anything whatsoever containing any dangerous drug shall until the contrary is proved, be deemed to have been in possession of such drug and shall, until the contrary is proved, be deemed to have known the nature of such drug.

A scrutiny of the above provision requires that before a person is deemed to be in possession of the drugs and deemed to know the nature of the drugs, the invoker of that provision must first establish custody or control on the part of that possessor. That being so, to successfully prove custody and control on the part of the accused, by necessity *mens rea* must be established in whatever form or way acceptable within the context of the law (*Public Prosecutor v. Bahari bin Isa* [1999] 1 LNS 323; *Public Prosecutor v. Ramli Long & Anor* [1993] 1 CLJ 144; *Saad bin Ibrahim v. Public Prosecutor* [1968] 1 MLJ 158). The facts elicited from witnesses revealed that even though the accused was passive when in the custody of the custom officers, from the surrounding facts and her conduct I was satisfied that she was the very person who must have concealed those wrappings in her underwear. From the way they were wrapped, carried and hidden I could also safely infer (apart from being armed by the 'presumption' under the Act), that she knew of the nature of the substance in her custody and control. In the circumstances of the case what other conclusion could I arrive at, except that she must have known of the nature of the drugs (*Chan Pan Leon v. PP* [1956] MLJ 237; *PP v. Badrulsham bin Baharom* [1988] 2 MLJ 585).

After the prosecution had invoked s. 37(d), and the court being aware of the legal views of *Muhammed bin Hassan v. PP* [1998] 2 CLJ 170, where the Federal Court had discarded the right of the usage of "double presumption", I was left wondering of the direction of the prosecution's case. Apart from it being trite law that any invocation of a second presumption is now taboo, the invocation of s. 37(da) here was an improbability, as the minimum statutory amount of 15 grams of heroin was way out of the prosecution's reach. As stated earlier I was only convinced of the prosecution having successfully proved a mere 1.19 gram of the drugs, short of 13.81 grams to qualify under s. 37(da).

Without the benefit of s. 37(da), heavily laced with the concept of presumption, to successfully establish the ingredient of trafficking as defined under s. 2 of the Act, was certainly a mean task. The definition reads:

> s. 2: trafficking includes the doing of any of the following acts, that is to say, manufacturing, importing, exporting, keeping, concealing, buying, selling, giving, receiving, storing, administering, transporting, carrying, sending, delivering, procuring, supplying or distributing any dangerous drug.

Even if s. 37(da) were applicable in this case, where mere possession shall be presumed to be trafficking, case laws had clearly enunciated that mere passive possession without any overt act would not qualify as trafficking (*Public Prosecutor v. Chia Leong Foo* [2000] 4 CLJ 649). In *Chow Kok Keong v. PP* [1998] 2 CLJ 469 the Federal Court had occasion to opine:

> I am therefore bound to find that the mere act of transporting, carrying, sending, delivering, procuring, supplying or distributing by the accused in the case, (acts which he could conceivably be perceived to do as the driver of the car under the circumstances) would not be enough to constitute an act of trafficking in the absence of any evidence that the drugs were to be transferred or conveyed to another party (emphasis added).

Clearly here the prosecution had failed to prove that the accused had attempted to transfer or had intentionally wanted to hand over the drugs to anyone, hence bringing the action of the accused outside the ambit of the definition of trafficking. In other words the extra mileage of physical positive action of passing over of that 'proprietarial' ingredient to another was absent. The amateurish and impatient actions of not waiting a little bit longer by the custom officers probably saved the day for her and the third party if any.

In any prosecution, the route undertaken by the prosecutor to bring the accused to justice is littered not only by precedural landmines but also by substantive legal requirements. The ultimate aim is a conviction attainable only after the prosecution has proven its case beyond reasonable doubt, at the end of the defence case. To qualify to 'enter' the defence stage, it is encumbent upon the prosecution to adduce admissible evidence and to eventually produce a *prima facie* case. I do not wish to belabour on this terminology of *prima facie* or even attempt to supply its definition, except to refer to the source of those words ie, s. 180(1) of the Criminal Procedure Code. What is obvious is that to fall within the context of that terminology, the latter provision does not mention or suggest whether a minimal or a maximum evaluation exercise of the evidence is to be undertaken.

But it will be a strange day when the accused person having remained silent, or no evidence at the defence stage sufficiently creditable of rebutting that *prima facie* case has been adduced, witnesses an acquittal. As I see it, if the accused pursues any of those courses of actions, and after his case has been officially closed, the prosecution must be entitled to a conviction, as at that last stage without any challenge in the offing, it will have successfully proven a case beyond reasonable doubt.

On those sets of facts of where a conviction inevitably follows after the accused chooses to remain silent, or no creditable rebuttal evidence has been adduced, logic requires that that *prima facie* case must surely have come about after a maximum evaluation of the evidence has taken place. The product of the exercise of the maximum evaluation and the inaction of the accused cannot be anything else but a conviction. This must logically follow, as the burden always rests on the prosecution to prove every ingredient that constitutes the offence with which the accused is charged, with the defence being called only after the court has been satisfied of the prosecution's success.

Approaching it from the other extreme angle, does it not mean that if the court has called the defence after being satisfied of a *prima facie* case having been established pursuant to a minimal evaluation, and in the event the accused chooses to remain silent whereupon an acquittal ensues, the evidence to acquit him must have emanated from the prosecution's very own case? If the latter statement is correct how then can a *prima facie* case be said to have been proved in the first place? Alternatively, surely a resultant acquittal of the accused after his defence has been called be it pursuant to a minimal or maximum evaluation, cannot have been because of his physical

features, sex, colour, creed or religion or that the judge alighted from the wrong side of the bed? On that premise the only sensible or common sense approach must be that, before the defence is called, a maximum evaluation of the prosecution's evidence must be undertaken by the presiding judge (*Looi Kow Chai & Anor v. Public Prosecutor* [2003] 1 CLJ 734).

To avoid any misinterpretation, the 'maximum evaluation' exercise conducted at the close of the prosecution's case, must never be equated with the precept of 'beyond reasonable doubt', which is associated with the success of the prosecution but at the end of the accused's case. Needless to say, the success of the prosecution in proving its case beyond reasonable doubt will very much depend on another evaluation of every shred of evidence before the court, at the end of the accused's case. En route to success, while it is encumbent on the prosecution to prove the accused's guilt, the latter has a lighter burden, as it is never his responsibility to establish his innocence but merely to raise a doubt as to his guilt. If the accused succeeds, the prosecution thus has failed to prove his assertion beyond reasonable doubt, and an acquittal must necessarily follow.

On the totality of the evidence I could not conclude that the prosecution here had made out a *prima facie* case. The latter had failed to prove the total sum of 29.18 grams of heroin, and the ingredient of trafficking. After undergoing a maximum evaluation of the available evidence adduced at the stage of the prosecution, as far as I was concerned the prosecution had merely managed to prove that the accused had mere possession. On that premise, it could not be said that the prosecution had successfully proved a prima case under s. 39B(1)(a) of the Act, worthy of the defence being called.

I could safely say here that the prosecution had successfully proved possession of 1.19 grams of heroin, whereupon I had unhesitatingly amended the charge to that of s. 12(2) of the Dangerous Drugs Act 1952. The amended charge was read out to her, and she pounced on the opportunity to plead guilty. On reflection, even if I had erred on the finding of fact on the issue of *mens rea,* mercifully the moment she pleaded guilty to the amended charge that ingredient became academic. Having found her guilty and after convicting her, I had imposed a sentence of five years imprisonment to take effect from the date of arrest.